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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,653	01/27/2004	Anthony R. Garr	0730-199P/FLS	3970

22831 7590 09/24/2004

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EXAMINER

MILLER, BENA B

ART UNIT PAPER NUMBER

3712

DATE MAILED: 09/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/766,653

Applicant(s)

GARR, ANTHONY R.

Examiner

Bena Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-11 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 05/17/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

Claim 10 objected to because of the following informalities: The word "tope" should read -- top --. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Hatfield et al.

Regarding claim 1, Hatfield teaches in the figures a container comprising a container body comprised of spaced apart front and back walls (27,17), a bottom structure (12), a top structure (14; it should be noted that the examiner takes the position that the container of Hatfield is capable of being supported in an upright position by the bottom structure (first primary orientation) and the container is capable of being supported in a horizontal position by its back wall (second primary orientation), an access cover (20), the access cover being hingedly connected to portions of the bottom structure (fig.1).

Regarding claim 2, Hatfield further teaches a range of pivoting motion is at least 180° (fig.2).

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Regarding claim 3, Hatfield further teaches the first portion of the access cover is disposed at a large angle (fig. 2) and retaining walls extend along opposite side edges of the access cover (26).

Regarding claim 4, Hatfield further teaches outer surface portions (fig.2).

Regarding claim 8, Hatfield further teaches a upper edge portion (23).

Claims 1-4, 8 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Husby.

Regarding claim 1, Husby teaches in the figures 3-5 a container comprising a container body comprised of spaced apart front (23) and back walls (22), a bottom structure (36.37), a top structure (15; it should be noted that the examiner takes the position that the container of Husby is capable of being supported in an upright position by the bottom structure (first primary orientation) and the container is capable of being supported in a horizontal position by its back wall (second primary orientation), an access cover (fig.4) and the access cover being hingedly connected to portions of the bottom structure (fig.5).

Regarding claim 2, the examiner takes the position that the device of Husby has a range of pivoting motion is at least 180° (fig.2).

Regarding claim 3, Husby further teaches the first portion of the access cover is disposed at a large angle (fig. 4) and retaining walls extend along opposite side edges of the access cover (24).

Regarding claim 4, Husby further teaches outer surface portions (fig.3-5).

Regarding claim 8, Husby further teaches a upper edge portion (fig. 3).

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Regarding claims 10 and 11, Husby further teaches a top structure including a handle (26; fig. 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hatfield in view of Parmater et al.

Hatfield teaches in the figures most of the elements of the claimed invention except for the bottom structure recessed and including a downwardly projection support portions. Parmater et al teaches in the figures case having a bottom structure (fig.2) having a recess and including a downwardly projection support portions (fig. 3 and 14). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a recess and downwardly projection support portions as taught by Parmater in the container of Hatfield for the purpose of supporting the container.

Regarding claim 6, it would have been considered a mere design choice to having the predetermined dimension approximately one-half the front-to-back dimension for the purpose of providing a sufficient space for the toys when placing on the access cover.

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Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hatfield.

Hatfield teaches in the figures most of the elements of the claimed invention except for the handle on the top structure. Hatfield teaches a container in figure 1 having a handle (46) attached thereto. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a handle on the top structure of the container of Hatfield, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

Allowable Subject Matter

Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

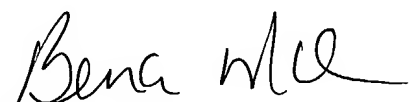
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hillesland, Kneeler, Lindenauer, Harper, Taggart, Thayer, Mundschenk, O'Dair.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643. The examiner can normally be reached on Monday-Friday.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Bena Miller", with a stylized flourish at the end.

Bena Miller
Examiner
Art Unit 3712

bbm
September 22, 2004